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EXAMINER
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MARSH, STEVEN M

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/800,293  
Filing Date: March 12, 2004  
Appellant(s): TAM ET AL.

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Roger D. Greer  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 19, 2008 appealing from the Office action mailed September 7, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,087,813	Cunningham	7-1999
5,927,745	Gress et al.	2-1992

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 7, 10, 13, 18-23, 27, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,087,013 to Gress et al. Gress et al. discloses a collapsible rolling stand with a front-end portion and a rear end portion. The stand can be manipulated between open and closed positions and has a top frame with a generally planar portion (20 or 24) configured to have an object secured thereto in a way such that the top planar portion is generally vertical when the stand is in the closed position and generally horizontal in an open position. There is a folding mechanism that supports the top frame with a handle (42) operatively connected to one end portion of a pair of spaced apart elongated first members (48a) that have opposite end portions defining contact points with the ground, and a pair of spaced apart second members (56) with wheels for enabling a user to roll the stand. The first and second members are pivotally connected to one another and configured such that the weight of an object provides a substantial portion of the necessary force needed to pivot the first and

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second pairs of members to further separate the forward contact point from the rear wheels and move the stand from the closed position to the open positions wherein the top frame planar portion is substantially horizontal. The first members are located on each side of the stand and are operatively connected to and pivotable relative to a rear portion of the top frame planar portion. Each of the second members has a pivot connection (62) to one of the first members at a point intermediate the ends of the first member, each second member having one of the wheels connected to a rearward end portion thereof and an extension located forwardly of the pivot connection at a predetermined angle between 40 and 90 degrees relative to the lengthwise direction of the second member. There is a link member (72,74) pivotally attached to the distal end of the extension and to the top frame planar portion and a handle (42) connected to the planar portion. There is a locking mechanism (40) for releasably holding the stand in the closed position wherein actuating the locking mechanism enables the second member to pivot about the pivot connection causing the weight of the object to move the wheels a short distance away from the top frame planar portion, further movement of the stand in the rearward direction causing the second members and wheel to rotate toward the rear of the stand to the open position where the top frame planar portion is oriented in the substantially horizontal position.

The handle extends between and is connected to both first members and the cross member is positioned at an elevation below the top frame planar portion (at 44) and has a curved shape upwardly from the first members. The first members have a generally transverse extension (53) at the ground engaging opposite ends and at least

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one front end bridge (50) interconnecting the ends. The stand could support a circular saw and the top frame planar portion includes two side frame members (the sides) and two end frame members (the ends) interconnected in a generally planar rectangular configuration. There is at least one stop member (49) connected to each second member for contacting the first member limiting the pivoting movement there between during the opening of the stand so that the top planar portion is held in the generally horizontal position. There is also a link member (26, 28) pivotally attached to the distal end of the rear leg extension and the frame portion, as well as main side struts (54, 56, 60), and the top frame includes an outwardly directed extension with a slot one each side thereof (at 74) for receiving an end of a link member. The first and second members are configured so that the weight of an object can provide a substantial portion of the necessary force needed to pivot the first and second pairs of members to move the stand from the open position to the closed position, wherein the top frame planar portion is in a generally vertical orientation.

Claims 1 and 14-16 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,927,745 to Cunningham. Cunningham discloses a collapsible support stand that can be used with an elongated normally horizontally oriented object attached thereto. The stand has a front and a rear end portion, and being capable of being manipulated between open and closed positions. The stand has a top frame (14 and 62) with a generally planar portion (the top or 62) configured to have an object secured thereto. The top frame planar portion is generally vertical when the stand is in its closed and generally vertical position. There is a folding mechanism (16) supporting the top

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frame and including at least one handle (58) operatively connected to one end portion of a pair of spaced apart elongated first members (64 and 86) that have opposite ends defining contact points with the ground and a pair of spaced apart second members (68 and 90) each having wheels (42) for enabling a user to roll the stand. The first and second members are pivotally connected (at 66 and 88) to one another and configured so that the weight of the object provides a substantial portion of the necessary force needed to pivot the first and second pairs of members to further separate the forward contact point from the rear wheels and move the stand from the closed position to the open position, wherein the top planar portion is substantially horizontal. There is a spring (106 or 134) for biasing the stand toward its closed position when in its open position, such that an operator is not required to exert more than a small force to move the stand to its closed position. The spring is substantially unloaded when the stand is in its closed position.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunningham. Cunningham does not specifically disclose the spring as having one end connected to the first and second members, but rather is only connected to one member. However, the spring is attached to a stationary object connected to the other member, and one of ordinary skill in the art at the time of the present invention would have known to alternate the location of the spring to an external location to provide easy access as a matter of design preference.

### **(10) Response to Argument**

In response to Applicant's arguments that the preamble distinguishes over Gress, the "object" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Applicant claims the stand as being "for use" with a normally horizontally oriented object. The stand taught by Gress is capable of supporting such an object and the object can also be adjusted to a vertical position.

Applicant argues that Gress et al. and Cunningham do not show the object in a vertical orientation. First, it should be noted that in addition to failing to positively recite the object in the claim, Applicant doesn't claim the object as being vertically oriented, but rather that it is *generally* vertically oriented. Furthermore, what are the object's vertical and horizontal orientations? The object extends in both horizontal and vertical directions. Also, with respect to Gress et al., assuming figure 2 shows the horizontal orientation, figure 4 shows a *generally* vertical arrangement. With respect to Cunningham, Applicant argues that Cunningham does not teach a stand with "said top frame planar portion being oriented in a generally horizontal position when said stand is in its open position and a generally vertical position when said stand is moved to its closed position. However, as argued above, given its broadest interpretation, the stand



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taught by Cunningham is capable of a "generally" vertical orientation when the stand is lifted onto its wheels into a generally vertical position (compared to its at rest position) for transport. In this position the top frame planar portion of Cunningham is in a "generally" vertical position. Gress and Cunningham both show stands that can support an object of a weight where it would provide a substantial portion of the necessary force needed to pivot the first and second pairs of members.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Steven M. Marsh

/S. M. M./

Conferees:

/Amy J. Sterling/ 9/26/08 /AJS/

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